



Comptroller General
of the United States

Washington, D.C. 20548

144728

Decision

Matter of: CV Associates--Reconsideration

File: B-243460.2

Date: August 20, 1991

Robert E. Russell, Sr., for the protester.
Barry D. Segal, Esq., General Services Administration, for the agency.
Tania L. Calhoun and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably canceled solicitation for offers of space where space requirements have increased more than 28 percent over advertised space.
2. Protest of conduct of solicitation for offers (SFO) of space was properly dismissed, where the SFO was properly canceled.
3. A protester is not entitled to reimbursement of the costs of proposal preparation and filing and pursuing the protest where the protest was properly dismissed as academic.

DECISION

CV Associates (CVA) requests that we reconsider our dismissal of its protest concerning solicitation for offers (SFO) No. SFO 90-08, issued by the General Services Administration (GSA) for the lease of office space in Lakewood, Colorado. CVA also protests the cancellation of the SFO and requests that it be reimbursed the costs of its proposal preparation, and filing and pursuing the protest.

We affirm the dismissal, deny CVA's protest of the cancellation, and deny its claim for costs.

The SFO was issued on May 10, 1990, for the lease of approximately 122,000 square feet of office and related space in Lakewood, Colorado. The proposed tenants were various elements of the Department of Energy (DOE), particularly the Western Area Power Administration (WAPA). GSA received offers, held discussions, and obtained best and final offers by November 19, 1990. CVA filed a protest with our Office on March 29, 1991, alleging improprieties in the conduct of this procurement.

On April 5, WAPA submitted to GSA a supplemental space request increasing its individual requirements to over 146,000 square feet.^{1/} The increase resulted from the conversion of 105 contractor positions to federal employee positions. Because of WAPA's increased space requirements, GSA canceled the solicitation on April 25. GSA indicates that it intends to readvertise based upon the increased space requirements. On May 6, we dismissed CVA's protest of the SFO since we found the cancellation of the solicitation rendered the protest academic. CVA contends that both the cancellation of the SFO and our dismissal of its protest were improper.

In determining the propriety of the cancellation of a solicitation for leased space, an agency need only show a reasonable basis to cancel the procurement. American Mgmt. Co., B-228279; B-228280, Jan. 15, 1988, 88-1 CPD ¶ 38. Where space requirements change from those contemplated under the original SFO, an award for the original amount of square footage under the SFO generally no longer satisfies the government's requirements. 120 Church St. Assocs., B-232139.5, Feb. 28, 1990, 90-1 CPD ¶ 244. A substantial increase in the government's space requirement warrants canceling the solicitation. ASG Partnership, B-227872, Sept. 30, 1987, 87-2 CPD ¶ 321.

In this case, WAPA's additional contiguous space requirements increased by more than 28 percent. GSA reasonably found that the changed requirements required a new market survey, since some potential offerors may not have proposed on the advertised requirement and other offerors may not meet the increased space requirements. CVA does not contend that DOE does not require the requested additional space nor does CVA assert that its offered space could meet the increased space requirements.

^{1/} The supplemental space request increased the total project requirements from 121,900 net usable square feet to 146,512 net usable square feet, an increase of 28.4 percent.

Instead, CVA asserts that GSA should have known earlier that WAPA wanted more space and contends that the cancellation decision was made in bad faith in response to CVA's protest. The record does not indicate that the cancellation decision was made in bad faith or even that it was unreasonable; indeed, as indicated above, the significantly increased space requirements sufficiently justify the cancellation. Also, the record indicates that GSA was first apprised of WAPA's increased space requirements at about the same time the protest was filed.^{2/} From the record, we conclude that GSA had a reasonable basis to cancel the SFO. See Crow-Gottesman-Hill #8--Recon., B-227809.2, Nov. 10, 1987, 87-2 CPD ¶ 471.

In any case, even assuming GSA either knew or should have known of the increased space requirements at some earlier date, we have recognized that the facts that justify canceling an SFO can be considered no matter when they surface. American Mgmt. Co., B-228279; B-228280, supra. This is so even if the cancellation action, and the reasons therefor, follows a protest. Id.

CVA asserts that our dismissal of its initial protest was improper and that we should consider the merits of its initial protest, notwithstanding the cancellation of the SFO. However, the proper cancellation of a solicitation renders a protest academic. Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102. We do not consider academic protests because to do so would serve no useful public policy purpose. We only consider protests against specific procurement actions and will not render to a protester what would be, in effect, an advisory decision. See East West Research Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379. Thus, CVA's initial protest was properly dismissed as academic, and we decline to comment on its merits.

CVA claims the costs of preparing its offer and filing and pursuing its protest. However, a protester is not entitled to reimbursement of these costs where the protest is properly

^{2/} GSA claims it first learned of this change in WAPA's requirements in a March 19, 1991, meeting. GSA further claims that WAPA has explained that its program change was approved in January 1991 by the Office of Management and Budget (OMB) but that time was required for implementing decisions. The actual supplemental space request was made to GSA on April 5. While the record indicates that WAPA had requested more space, more than a year earlier, this request was not based on the OMB-approved WAPA conversion of contractor employees to federal positions.

dismissed as academic.^{3/} Global Fuels Ltd., Corp.,
B-225665.2, Mar. 27, 1987, 87-1 CPD ¶ 355; Brandebury
Aerostructures--Request for Recon.; Claim for Protest Costs,
B-236792.5, May 31, 1990, 90-1 CPD ¶ 510. In this regard, we
have found it inappropriate to allow the recovery of such
costs, absent a decision on the merits of the protest that a
solicitation for a contract does not comply with statute or
regulation. Id.

The dismissal of CVA's prior protest is affirmed, CVA's
protest of the cancellation is denied, and CVA's claim for
costs is denied.



James F. Hinchman
General Counsel

^{3/} Since CVA's initial protest was filed on March 29, the new
section 21.6(e) in our Bid Protest Regulations, 56 Fed.
Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.6(e)),
effective for protests filed on or after April 1, 1991, which
permits the payment of protest costs in certain cases where an
agency takes corrective action in response to a protest, is
inapplicable. In any case, the record indicates that GSA's
cancellation was due to its increased space requirements, not
CVA's protest.